

**BEFORE THE  
U.S. DEPARTMENT OF ENERGY  
Washington, D.C. 20585**

In the Matter of:	)	
	)	
<b>AHT Cooling Systems, Inc.</b>	)	Case Number: 2015-SE-42031
(commercial ice-cream freezers)	)	
	)	

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued: January 8, 2016

Number of alleged violations: 1,032 (880 units sold, 152 in stock)

Maximum possible assessment: \$ 201,000

Proposed civil penalty: \$ 201,000

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that AHT Cooling Systems, Inc. (“AHT”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429 and 431.

**Legal Requirements**

Commercial ice cream freezers are covered equipment subject to energy conservation standards set forth in 10 C.F.R. § 431.66(d). *See* 42 U.S.C. § 6313(c); 42 U.S.C. § 6311(1)(E).

“Ice-cream freezer” is defined as a commercial freezer<sup>1</sup> that is designed to operate at or below –5 °F (±2 °F) (–21 °C ±1.1 °C) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream. 10 C.F.R. § 431.62.

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<sup>1</sup> “Commercial refrigerator, freezer, and refrigerator-freezer” means refrigeration equipment that (1) is not a consumer product; (2) is not designed and marketed exclusively for medical, scientific, or research purposes; (3) operates at a chilled, frozen, combination chilled and frozen, or variable temperature; (4) displays or stores merchandise and other perishable materials horizontally, semi-vertically, or vertically; (5) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors; (6) is designed for pull-down temperature applications or holding temperature applications; and (7) is connected to a self-contained condensing unit or to a remote condensing unit. 42 U.S.C. § 6311; 10 C.F.R. § 431.62.

Effective January 1, 2012, self-contained horizontal closed transparent commercial ice cream freezers must have a daily energy consumption (in kilowatt hours per day) that do not exceed 0.43 plus the product of 0.56 and the total display area of the ice-cream freezer ( $0.56 \times \text{TDA} + 0.43$ ). 10 C.F.R. § 431.66(d)(1).

Manufacturers and private labelers are prohibited from distributing in commerce<sup>2</sup> covered equipment in the United States that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6316(a).

Distribution in commerce by a manufacturer or private labeler of any new covered equipment that is not in compliance with an applicable energy conservation standard constitutes a prohibited act punishable by civil penalty pursuant to 10 C.F.R. § 429.120. Each unit of the covered equipment distributed in the United States constitutes a separate violation, and each such violation is subject to a maximum penalty of \$200 (two hundred dollars). 42 U.S.C. § 6303; 10 C.F.R. § 429.120.

### **Allegations**

DOE alleges:

1. AHT has manufactured and distributed in commerce in the United States commercial refrigeration equipment model RIO S 68 L F<sup>3</sup> (the “subject model”).
2. Beginning January 1, 2012, AHT has distributed in commerce in the United States at least 1,032 units of the subject model.
3. The subject model has a self-contained refrigeration system.
4. The subject model allows access through a hinged or sliding door and a door angle greater than or equal to 45 degrees (i.e., is “horizontal”).
5. The subject model has glass doors (i.e., is “closed transparent”).
6. The subject model operates at or below  $-5^{\circ}\text{F}$  ( $\pm 2^{\circ}\text{F}$ ) ( $-21^{\circ}\text{C} \pm 1.1^{\circ}\text{C}$ ).
7. The subject model was marketed and sold as a self-contained horizontal closed transparent commercial ice cream freezer, as evidenced by AHT’s website, labeling, and distribution.
  - a. Prior to October 14, 2015, “RIO S 68” was listed under the “Ice-Cream Merchandisers” section in AHT’s website. The “RIO S 68” was marketed on AHT’s website as having a temperature range of  $7^{\circ}\text{F}$  to  $-9^{\circ}\text{F}$ .

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<sup>2</sup> “Distribute in Commerce” or “Distribution in Commerce” means to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce. 42 U.S.C. § 6291(16).

<sup>3</sup> As detailed in the Notice of Noncompliance Determination issued on October 14, 2015, “RIO S 68 L F” includes all freezer models with a nameplate model number of RIO S 68 F L or RIO S 68 L F, including models RIO S 68 F L R404A and RIO S 68 L F R404A, regardless of refrigerant.

- b. DOE purchased the “RIO S-68” on February 27, 2015 through normal, commercial means (i.e., purchased through a distributor), and received the subject model.
  - c. The unit of the subject model DOE obtained was marked with a label that stated “This equipment is intended for the storage and display of packaged ice-cream only.”
  - d. The units of the subject model provided directly to DOE by AHT in response to the Test Notice issued on June 19, 2015 were also marked with labels that stated, “This equipment is intended for the storage and display of packaged ice-cream only.”<sup>4</sup>
  - e. Prior to October 14, 2015, the subject model or any model titled “Rio S 68 \*\*\*\*\*” was not marketed on AHT’s website as a commercial freezer.<sup>5</sup>
  - f. In test reports provided by AHT to DOE for model numbers “Rio S 68” and “Rio S 68 F L”, dated November 4, 2011 and May 1, 2013, respectively, photographs of the labels on each model reflect the titles of “RIO S 68” and “RIO S 68 L”.
8. Accordingly, the subject model is properly classified as a self-contained horizontal closed transparent commercial ice cream freezer.
  9. DOE’s testing of four units of the subject model, conducted in accordance with DOE test procedures (10 C.F.R. § 431.64), yielded daily energy consumption of 3.81, 3.43, 3.86, and 3.40 kWh/day.
  10. The mean tested total display area (TDA) of the four units of the subject model tested is 3.1 ft<sup>2</sup>.
  11. Given the tested units’ mean TDA, the maximum permissible rate of energy consumption for the subject model is 2.17 kilowatt hours per day (kWh/day).
  12. When evaluated in accordance with 10 C.F.R. § 429.110(e) and 10 C.F.R. Part 429, Subpart C, Appendix B, the subject model does not comply with the maximum permissible rate of energy consumption set forth at 10 C.F.R. § 431.66(d)(1).

**The following information is provided in question and answer format to help explain your legal obligations and options.**

*What do I do now?*

DOE is offering to settle this enforcement action by execution of the attached Compromise Agreement within thirty (30) calendar days of the date of this Notice and then fulfill all obligations of the compromise agreement, which includes paying the fine within thirty (30) calendar days of the date of an order adopting the Compromise Agreement.

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<sup>4</sup> In accordance with 10 CFR § 429.110(d)(1), the test units were only required not to be modified or adjusted in any manner unless (1) such preparation, modification, or adjustment was allowed by the applicable DOE test procedure and (2) AHT provided advance written notice to DOE of any such preparation, modification, or adjustment. DOE did not direct AHT to mark the test units with the “...packaged ice-cream only” label.

<sup>5</sup> Subsequent to issuance of the Notice of Noncompliance Determination, AHT added the “RIO-S F” to its website under a “Freezer” heading, with the specific designation of “NEW”. The “RIO-S F” is described as a “functional all-rounder with minimum space requirements.” The temperature range on the “RIO-S F” is marketed as 7 °F to -9 °F.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (currently \$201,000). You have other options as described below.

*What are my other options?*

If you do **not** agree to DOE's settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts de novo.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (ALJ) for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

*When must I respond?*

You must submit a signed compromise agreement within thirty (30) calendar days of the date of this notice to pay the lowest fine. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE within thirty (30) calendar days of the date you received this notice of your selection of Option 1. Otherwise, if you do not settle the case, DOE will refer to the case to an ALJ as described in Option 2.

*How should I submit my response?*

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: smitha.vemuri@hq.doe.gov

By fax to: (202) 586-3274

By mail to: Smitha Vemuri  
U.S. Department of Energy  
Office of the General Counsel (GC-32)  
1000 Independence Ave., SW  
Washington, DC 20585

*What happens if I fail to respond?*

If you fail to respond within thirty (30) calendar days after receiving this notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

*What should I include in my response?*

1) If you wish to accept DOE's settlement offer, you should submit the signed compromise agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.

2) Provide your Taxpayer Identification Number (“TIN”). The Debt Collection Improvement Act requires all Federal agencies to obtain the TIN in any case which may give rise to a debt to the government.

*How did DOE calculate the maximum possible assessment?*

Federal law sets a maximum civil penalty for each unit of a covered product or equipment that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. 10 C.F.R. § 429.102(a)(6). In the maximum penalty calculation in this notice, DOE has calculated a maximum penalty of \$200 per unit for 1,032 units distributed in commerce in the U.S.

If you have any questions, please contact Smitha Vemuri by email at [smitha.vemuri@hq.doe.gov](mailto:smitha.vemuri@hq.doe.gov) or by phone at (202) 586-3421.

Issued by:

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Laura L. Barhydt  
Assistant General Counsel for  
Enforcement